

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY
MINUTES OF A PUBLIC HEARING**

DATE..... September 24, 2003
TIME..... 7:00 P.M.
PLACE..... CO. OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE IN 47901

MEMBERS PRESENT

Ralph Webb
Gary Schroeder
Jean Hall
Steve Clevenger

MEMBERS ABSENT

Mark Hermodson
Edward Weast
Bruce Junius

STAFF PRESENT

Sallie Fahey
Krista Trout
Michelle D'Andrea
Jay Seeger, Atty.

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 24th day of September 2003, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

Vice President Jean Hall called the meeting to order.

I. APPROVAL OF MINUTES

Ralph Webb moved to approve the minutes of the August 27, 2003 public hearing. Gary Schroeder seconded the motion.

Jean Hall stated that a correction needed to be made on page 2. He said that his comments should read "He mentioned that *in the past* there were a lot of flashing lights *by previous businesses that occupied the premises* that made it hard to miss. *He found this particular signage less obtrusive than the prior.*"

Jean Hall called for a voice vote on the minutes as amended. The motion carried by voice vote.

II. NEW BUSINESS

Jean Hall congratulated Sallie Fahey on her new appointment to the Executive Director position.

Sallie Fahey thanked the Board and stated that it would be a pleasure to serve the Board and the community. She stated that **BZA-1646 NEW DIRECTIONS INC.** has asked for a continuance to the November/December BZA meeting on December 3, 2003. She stated that they would be filing additional legal descriptions to include more land in the petition. She stated that **BZA-1647-JOHN AND MIMI PEZZUTO**, needed to be continued to the October 22, 2003 BZA meeting.

III. PUBLIC HEARING

Jean Hall read the meeting procedures.

Ralph Webb moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the application to be heard this evening and responses from the checkpoint agencies. Gary Schroeder seconded and the motion carried by voice vote.

Ralph Webb move to continue **BZA-1646 NEW DIRECTIONS INC.** to the December 3, 2003 meeting and **BZA-1647-JOHN AND MIMI PEZZUTO** to the October 22, 2003 meeting. Gary Schroeder seconded and the motion carried by voice vote.

1. **BZA-1640—REGINALD L. & LAURA J. ROY:** Petitioners are seeking a special exception to legitimize a plumbing contracting business (SIC 1711) in the A zone on 1.71 acres, operating Monday through Friday from 7am until 6:30pm and on Saturday from 7am until 3pm on property located at 1305 E 750 S, Wea 33(SW)22-4. (UZO 3-2) The filing of this request predates the adoption of UZO Amendment 36. WITH CONDITIONS AND COMMITMENT. CONTINUED FROM THE JULY MEETING AT PETITIONERS' REQUEST. THIS CASE MUST BE HEARD THIS MONTH.

Ralph Webb moved to hear and vote on the above-described request. Gary Schroeder seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial photo, revised site plan, and 4 photographs. She mentioned that the Highway Department has approved and issued a permit for the new driveway shown on the revised site plan. She stated that the changes include moving the driveway from CR 750 to a commercial driveway on CR 125 E. and diverting the creek via a culvert under the road. She pointed out that the temporary driveway would also be removed. She reiterated that the new site plan has made all the improvements to the satisfaction of the Highway Department. She read the staff report with recommendation of approval based on the following conditions:

1. A new building permit must be issued for a business use rather than personal use;
2. The proper inspections for construction must be completed;
3. A Certificate of Occupancy must be issued;
4. A permit for the construction of a commercial driveway on CR 125 E is issued.

Recorded Commitment:

1. A document in recordable form that prohibits delivery of products by semi tractor-trailer for the use authorized by this special exception.

She also read the addendum to the staff report. She read the following letters of opposition into the record:

Edward Snouwaert, 1718 East 800 South, Lafayette, IN.

Greg Ray 1810 East 750 South, Lafayette, IN.

Randy Williams, PO Box 1535, Lafayette, IN., recapped the hearing and voting history of this petition. He explained that they requested a 2-month continuance in order to address some of the concerns raised in the last meeting. He said that a lot of the concerns have been addressed and they have consulted a professional to reconfigure the site plan. He reiterated that the Executive Committee voted that granting this request would not substantially adversely affect the Comprehensive Plan and that the staff report recommends that all of the ballot items be found in favor of the petitioner. He pointed out that the Highway Department, and their engineering department, have issued and approved a permit for a new entry. He referenced the site plan and pointed out where the new driveway would be. He mentioned that the driveway on CR 750 was a major concern voiced at the last hearing from the remonstrators, not of the staff. He stated that concern has been alleviated because the driveway on CR 750 would be completely removed in favor of a new driveway on CR 125. He presented a packet to the Board. He recapped the major points of the packet as:

- the Highway Department has issued and approved the commercial permit for the new driveway on CR 125, based on the department's engineer's study of the site;
- all requirements of the permit will be met;
- a letter sent from petitioner to their vendors instructing them not to use semi-trucks for delivery, pointing out that this letter was sent before the staff required a recorded commitment;
- a list of all deliveries made to this site from July 8 – September 17, 2003 which equaled 13 deliveries, made in UPS trucks and box trucks, not semi-trucks, stressing that a semi would not fit in the new entrance
- photos of the neighboring sites showing overgrown sight obstacles, RVs, pickup trucks with trailers, farm trucks, and tractors, grain trucks, and Waste Management trucks

He stated that the petitioners have 5 employees, some of whom drive the trucks to their own homes. He explained that since the business offers a 24-hour emergency service, some of the employees drive the trucks to their own home at night so that the petitioners can dispatch them if a call comes in after business hours. He stressed that trucks are not dispatched from this site outside of business hours. He stated that the petitioners are willing and able to meet all conditions and commitments.

Warren Ardapple, 1407 E. 750 S. Lafayette, IN, stated that he lives next door to the petitioners and has lived there for 40 years. He informed the Board that he was in favor of granting this special exception because the petitioners have lived there for 8 years and have been great neighbors. He mentioned that the petitioners have improved their land and remodeled their home, which has increased the value of his own home. He informed the Board that since the last hearing, he has watched the traffic from 6:30 am to 8:30 am and he has seen UPS, Fed Ex, pickup trucks, farm tractors, passenger cars of people on their way to work and nothing very heavy. He explained that the paneled vans owned by the petitioner are comparative to any SUV. He stated that from 4:30 pm to 7:00 pm, when people are coming home, traffic is normal. He stressed that the petitioners do not create any problem at all. He presented the Board with a written copy of his statement.

Jessica Ardapple, 1407 E 750 S, Lafayette, IN, pointed out that the site in question is currently zoned for agriculture. She stated that everyone should not forget that farming is a business. She said that the pole barn used for plumbing supplies is no different than a farmer using a barn for seed, corn or chemicals. She mentioned that some farming chemicals are considered hazardous materials these days. She pointed out that neither farming nor this plumbing business have showrooms, a supply house, a store, or retail. She stated that both types of business have deliveries made by truck and now the plumbing business is restricted to small trucks, while farming has no limits. She said that farming is still allowed to drive semi-trucks, combines, and tractors pulling plows and discs, all of which are un-passable. She mentioned that it is easy to pass the petitioners' trucks. She pointed out that her own personal passenger SUV, is ½ a ton larger than any of the petitioners' trucks. She stated that when she was a child there were 29 licensed drivers living on that road and today there are 11, despite the addition of 2 new houses. She said that she does not think that the traffic has increased to the point of being dangerous and that it has actually decreased. She asked for approval.

Jeff Wethington 7700 South 125 East, Lafayette, IN, stated that he does not have any problem with the petitioners' business. He said that the changes that they have made have all been to comply with the neighbors and keep the peace. He mentioned that as far as commercial vehicles, that is a big name for a little truck, and they are mostly mini vans. He pointed out that UPS trucks go to his own residence at least 3 times a week. He said that the petitioners are good people and he does not see a problem with it.

Timothy Temple, 7535 S. 125 E., Lafayette, IN, asked for approval of this petition. He pointed out that the petitioners are doing everything that they have to in order to comply with all conditions, commitments and requirements. He mentioned that the new driveway will now be on his road and he sees no problem with that at all. He stated that it would be beneficial to have the small bridge over the drainage ditch replaced. He said that there may be a slight increase in traffic, but with all the new houses, there is going to be increased traffic anyway. He reiterated that the petitioner is doing everything that is asked and required.

Betty Ardapple, 1407 E 750 S, Lafayette, IN, stated that she lives next door to the petitioner and has lived there for 40 years. She informed the Board that when the petitioners bought the site, it was in need of many repairs, which he has completed. She said that 15-20 years ago there were more children and more cars on that road than there are today. She mentioned that the petitioner's children are the only children in the area and did not even start school until this year. She stated that she did not understand what the problem was. She pointed out that the trucks were not the problem because there is a lot of farm equipment that is even worse. She recapped the age groups of the residents of the area and pointed out that the petitioners are the only young people who had the courage buy the house and move to the area. She said that the petitioner has tried to comply with everything required of him. She stated that she did not agree with fighting progress and the neighborhood needs young people. She posed the question as to why this has come up now and not in the eight years the petitioner has lived there.

Laura Roy, 1305 East 750 South, Lafayette, IN, presented letters to the board from neighbors that were unable to attend the meeting. She stated that she and her husband have lived at this site for 8 years, were very happy at this site and hoped that they could stay there. She recapped some of the improvements they have made to the property and house since buying it. She informed the Board that this business is the their only source of income. She stated that they have three small children, and two of them just started school and riding the school bus. She pointed out that she would not allow her children

to ride the bus if their driveway was that dangerous. She said that they have 5 employees who also rely on the business as their only source of income.

Reginald Roy, 1305 East 750 South, Lafayette, IN, stated that he was co-owner of the plumbing business. He said that they moved to this site in 1996 and have made many improvements to the site. He informed the Board that their plumbing business has serviced many of the area residents, most of whom are the remonstrators. He stated that they are just trying to make a living, help the economy and provide jobs. He said that they currently have five employees and do not want or anticipate any more. He mentioned that the business does well and does not need to look for work. He asked for approval.

Brad Glass, Stuart & Branigin, 300 Main Street, Suite 800, Lafayette, stated that he represented a group of concerned citizens who live on CR 750 S and CR 125 E. He asked members of the audience who were in opposition to stand.

Members of the audience stood.

Brad Glass informed the Board that the group in the audience represented 5 out of the 7 homeowners on CR 750 E. in addition to a few from CR 125 E. He explained that these are the residents who are most affected by the petitioners' business on a daily basis. He stated that the reasons the residents were opposed to the business were items number 3 and 4 on the ballot. He said that his clients are concerned that granting the special exception will materially and permanently injure them, their property and the community because of traffic, noise production and hours of operation. He stated that as per the staff report the business produces 20-30 vehicles a day. He commented that was a significant increase in traffic. He mentioned that these are narrow, gravel, country, secondary roads that are not designed to handle commercial or business traffic. He said that at their most narrow they are 12 feet and 15 feet at the widest. He stated that to add that many and those types of vehicles are too many competing uses for that road. He mentioned that the high volume of traffic generated by the petitioners' business, traveling at high rates of speed, is inconsiderate to the neighbors and difficult to get around. He stated that farms generate tractor traffic seasonally and not 20-30 vehicles a day. He pointed out that when the commercial vehicles use this gravel road it creates a rumbling noise and a plume of dust, which is very disruptive. He reiterated that this business was located at a dangerous intersection, and would still have to use this intersection despite the new location of the driveway. He informed the Board that the only reason that the Highway Department was involved was because the remonstrators and himself requested that they look into it. He pointed out that the Highway Department only looked at the commercial driveway and not the traffic situation. He stated that the hours of operation were a concern because they have never stuck to business hours. He referred to an advertisement that lists 24-hour service. He pointed out that noise and dust production could occur in the middle of the night. He said that granting this special exception will subvert the general purposes served by the Ordinance. He pointed out that if this petition were filed today, a minimum of 5 acres would be required. He asked that the same consideration that went into that Ordinance amendment be considered here. He recapped the votes from each of the members from the last hearing and asked for denial.

Janet Frey, 1135 E. 750 S., Lafayette, IN, stated that she has lived at this address for 41 years and there has been a mutual respect between all the neighbors. She said that her major concern was the traffic generated by this business. She mentioned that she did not have a problem with the petitioners personally and has never met them. She stated that the employees come to work in the morning, leave in company cars, return several times during the day to pick up supplies, return in the evening and then leave to go home. She reiterated the dimensions of the roads and that it is a narrow secondary road. She stressed that commercial vehicles should not be allowed on a 12-foot wide road that ends at the bottom of a blind hill. She mentioned that the petitioners claim the hours of operation are 7 am to 6 pm daily and 7 am to 3 pm on Saturday, but that commercial vehicles are still traveling the road at 8 or 9 pm. She contended that the petitioner has misrepresented the extent of his traffic. She referenced the petitioners' previously stated comments that no customers visit the site because they have a showroom in town and that they do not advertise for business. She informed the Board that she has been unable to locate the showroom, presented them with an advertisement from the yellow pages and a picture of a park bench hosting an advertisement. She pointed out that the advertisement in the yellow pages included 24-hour service. She stated that current minimum requirement for a business is 5 acres and this site does not even meet the previous requirement of 2 acres. She said that if this is passed they would be setting a

precedent that anyone can do anything they want any place they want. She stated that if this were approved the Board would be opening themselves up for lawsuits, because it would be on record that no amount of acreage is required. She said that rules and regulations are in the best interest of everyone. She reiterated that this business does not even meet the previous requirement of 2-acres and to pass this would set a dangerous precedent. She claimed that the petitioner built the pole barn and then converted it to business use, knowing that it was against the zoning law. She stated that the farm trucks only use the road twice a year. She pointed out that when she moved into the area farm trucks and Waste Management trucks were expected. She asked how this business would be monitored if the special exception passes. She asked for denial.

Elizabeth Ray, 3618 Golden Lane, Lafayette, IN stated that she is a landowner in this area and previously lived there for 29 years. She mentioned that in all the years that she lived there she never saw a semi truck use the road. She said that she did not have a problem when the business had only 2 trucks, but now that it has 5 trucks, it is too much. She reiterated that the road is narrow. She informed the Board that there was a very serious accident at this intersection 2 years ago and she herself almost has an accident there last summer because a strange person was speeding on that road. She said that this has always been a residential area. She stated that she was opposed to this petition because it is too dangerous.

Nancy Wilcox, 1630 E. 750 S, Lafayette, IN, stated that she was opposed to this request. She said that the requirement is for 2 or more acres and the petitioner only has 1.7 acres. She informed the Board of the many different types of plumbing supplies the petitioner has stored outside the barn and that cardboard and pallets have been burned in the corner of the property. She said that this creates a hazard of grass, corn stalk and building fires because the fire department is so far away. She mentioned that this business started out with 2 vans and has grown to many vans, box delivery trucks, and pick up trucks, which travel the road many times a day. She reiterated that this business advertises a 24-hour service in the yellow pages so service truck travel is not limited to any set hours. She quoted from the UZO stating "no stock in trade shall be displayed, stored or sold at the location" and that the petitioner has violated all three. She mentioned that there is a UZO requirement that stated "...cannot create noise, dust, vibrations, smell, smoke, chemical hazards, traffic hazards or nuisances..." other than what is normal for the area. She stated that this large plumbing business would create all of the above listed nuisances. She said that she is not against this business, only this location and should be moved to an industrial park. She claimed that the petitioner has tried to cause friction between neighbors and families. She asked the board to consider the factors and the Ordinance, and not be influenced by the petitioner or his attorney. She posed the hypothetical question as to why there are zoning rules if they are not going to be followed. She stressed that the petitioner does not even have 2-acres.

Jean Hall asked Nancy Wilcox to remove the materials that she left behind.

Gretchen Verhoeven, 1501 E. 750 S., Lafayette, IN, stated that although she knew that the petitioner was a plumber, she did not know that he was operating an illegal business until she saw the sign posting. She said that when she used the petitioners' business to make repairs in her home, she thought it was in the interest of being a good neighbor. She mentioned that the petitioners have never attempted to contact her regarding this petition. She said that her major concerns were safety and the ability of the petitioner to follow the rules. She mentioned that there have been 2 incidents since the last hearing where she believes the petitioner is purposely trying to scare her. She informed the Board that on 8/19/2003 the petitioner filed a complaint against her running a home business. She said that the case was unfounded and closed. She pointed out that 5 personal cars, 5 trucks and a dumpster set this site apart from the character of the area. She contended that since the petitioner has ignored zoning laws for years, this should be denied. She pointed out that since the petitioner was in business before moving to this site, it should not be a hardship to move it to the showroom.

Jean Hall reminded the audience that personal attacks should not be made against anyone. He stated that anyone who possessed factual information would not be restricted. He stressed that nothing that could be construed, as name-calling would be allowed.

Phillip Wilcox, 1630 750 S., Lafayette, IN, stated that he was concern about the requested location of a commercial business. He said that this is a hilly, narrow and dusty road. He pointed out that the current

requirement is 5-acres and petitioner only has 1.7-acres which does not even meet the old requirement of 2-acres. He stated that the ordinance also says that the business could not create any noise, dust or traffic hazards, and there is no way it could follow that requirement. He commented that a growing and expanding business of this size needed to be located in an industrial park. He stressed this business should not be located in a residential neighborhood. He said that in his opinion, based on the effect this business would have on the resident's public safety, health, noise, dust and general welfare, it should be denied.

Jean Hall asked the audience not to repeat anything that has already been said, in some cases several times before. He said that he did not want to restrict anyone's right to speak, but in the interest of time, the official procedures must be followed. He directed his comments to all those who still wish to speak.

Ladonna Shorter, 7112 South 100 East, Lafayette, IN, stated that her road is not a gravel road, but that they already have so much traffic it is dangerous to go to the mailbox. She said that she has all the same concern as those already stated. She mentioned that an additional concern was that before all this attention was on this site, the property was not well maintained. She said that she did not personally know the petitioner and does not have anything against them. She pointed out that all of the farming traffic travels at very slow speeds. She mentioned that in this general area the Highway Department has been very concerned with private drives and therefore she was surprised that they approved the petitioners' permit for a commercial driveway.

Jerry Rupright, 7714 S. 125 E., Lafayette, IN, posed the question as to whether or not the petitioner had any intention of seeking a special exception prior to 3 months ago. He mentioned that this is the first opportunity the neighbors have had to voice their concerns. He pointed out that it is not the neighbors' responsibility to request the special exception. He commented that the plumbing trucks frequently do not yield or drive at a safe speed. He mentioned that the improvements to their home are irrelevant to this hearing.

Jean Leavitt, 1821 E. 750 S., Lafayette, IN, stated that this has been a stressful time for the neighborhood and it has been neighbor against neighbor. She said that she feels intimidated and everyone has found it difficult to come forward. She said that even though they fear and feel retaliation, they have rights too and believe that they will get some help and protection. She stated that she is not against the business, just the location. She referred to the minutes of the last meeting and said that they implied that the neighbors did not want to cooperate with the petitioner. She explained that the petitioners have never spoken to them or acknowledged their friendly wave. She said that in the last meeting the neighbors were asked to negotiate with the petitioners and they declined. She explained that rules are rules and the neighbors should not have to negotiate. She pointed out that since the petitioner has not followed the rules and regulations for the past 8 years, there is no evidence that he would follow them in the future. She said that when the petitioner first moved to this location, it was assumed that he was an employee who drove the company truck home. She stated that it was a surprise to find out that this was a large business operating out of this location.

Mark Shorter, 7112 South 100 East, pointed out that this road is a 35 mile-per-hour zone that the petitioners' trucks never follow. He stated that all the residents of this area have been there for 30 or 40 years and the petitioner has been there for only 8 years and is trying to take everything over. He said that he did not want to repeat everything that has been said before, but that he was in complete opposition to this petition.

Randy Williams stated that he was appalled by some of the comments made this evening. He thanked Jean Hall for stepping in to stop the personal comments. He said that he would address the slander statements made against the petitioner at another place and time, but that it was not appropriate to do so here. He stated that the petitioners have done everything that has been requested of them. He reviewed the concern of the driveway entrance and reiterated that it has been moved to the complete satisfaction of the Highway Department. He mentioned that the petitioners' traffic is directed to go the opposite way from the intersection that everyone is concerned about. He reiterated that the petitioner has admitted that the business has been operating from this site since 1997. He reviewed some of the plumbing business invoices showing work that had been done at the Verhoeven and Wilcox homes, stressing the recent dates. He mentioned that there was an event that started this situation and that it did not involve any

individuals. He stated that there are not any scare tactics being used as the neighbors implied. He strongly stressed that the 5-acre requirement does not apply to this case and cannot be considered. He stated that the petitioner was requesting to conform to the rules set in the UZO, which say a special exception is available to this property, for this use and at this location. He pointed out that the petitioner has restrictions and a commitment that must be followed and is not allowed to expand in this location. He requested approval.

Steve Clevenger asked if there was a timetable for the driveway being moved.

Randy Williams stated that if this request is approved, then the first thing that needs to be done is obtain permits for the occupancy and building. He pointed out that if this request were denied, they would not be going through the expense of changing the driveway. He said that the timetable would be however soon the building inspector could get out there.

Steve Clevenger stated that he just wanted to make sure that the old driveway is removed since there is not a condition that says it must be removed.

Randy Williams pointed out that that could be made a condition.

Steve Clevenger moved that they add a condition that the old driveway be moved to the new location. Gary Schroeder seconded and the motion carried by voice vote.

Randy Williams said that if the special exception were not approved, the driveway would remain as is.

Steve Clevenger agreed.

Ralph Webb asked for clarification that the previous requirement was 2-acres.

Sallie Fahey stated that the even the previous requirement of 2-acres did not apply to this location. She explained that there was confusion because a rural home occupation is required to have 2-acres, but is permitted by right and does not need the approval of either the Board or the Commission and is limited to one employee. She stated that this case is for a special exception for a primary use, which at the time it was filed did not have any acreage limitation. She reiterated that the 2-acre requirement never applied to this request, it only applied to rural home occupations, which this is not.

Steve Clevenger asked for clarification on the 24-hour advertisement.

Randy Williams explained that one of the petitioners' employee's drives a company truck to his home at night. If a call comes in after business hours, the petitioners call this employee at his home and dispatch him from there. He mentioned that in the last 7 years nothing has been dispatched from this site after hours.

Steve Clevenger asked for clarification that there are five employees and that number cannot increase.

Randy Williams stated that they have 7 parking spaces. He explained that if the number of employees increases, then the number of parking spaces also has to increase, however the special exception is based on the site plan and the site plan only shows 7 spaces, therefore they couldn't expand.

The Board voted by ballot 2 to grant –2 to deny thus granting **BZA-1640—REGINALD L. & LAURA J. ROY.**

Yes votes

Jean Hall
Steve Clevenger

No Votes

Gary Schroeder
Ralph Webb

Jean Hall stated that this case would be heard at the October 22, 2003 meeting due to lack of a majority vote. He stressed to the audience members that if they decide to speak at the October meeting, they should keep their comments on the highest professional level possible and avoid personal attacks. He stated that could only help their cause.

2. **BZA-1645—KOMARK BUSINESS COMPANY:** Petitioner is seeking a variance to allow a 28.8' setback from the right-of-way of SR 26 W instead of the required 60' for Lots 55 and 85 in the Orchard Subdivision, Section 1, Phase 3, Wabash 14(SW)23-5. (UZO 4-2-2) WITH CONDITION.

Ralph Webb moved to hear and vote on the above-described request. Gary Schroeder seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial photo, sketch plan and 5 photographs. She read the staff report with recommendation of denial.

Daniel Teder, PO Box 280, Lafayette, IN, recapped the right-of-way requirements for SR 26, the minimum building line and measurement that were on the plans. He pointed out that the need for the variance arose from a mistake missed by everyone during the whole process. He informed the Board that all the utilities are in place and houses are being built. He recapped the size of estate lots and patio lots and compared them to the square footage of the houses to show that it would not be reasonable nor a self-imposed hardship to have a 35-foot house on an estate lot. He agreed that lot 85 was not the minimum relief because he decided to file it as one petition to save costs. He informed the Board that there are about 18 houses on SR 26 that are less than 60 feet. He stated that lot number 1 in Appleridge is a 20-foot minimum building line instead of 60 feet. He reviewed and explained the calculations to show that the variance would be about 12.1 feet. He asked for approval.

David Kovich PO Box 1623, Lafayette, IN, stated that he was one of the developers on this project. He said that if a 35-foot house were built on that property, it would be very funny looking. He recapped the different size houses for the lots. He said that he bears some of the responsibility because he did not catch the mistake. He reviewed all the different steps in this process to stress that no one caught this mistake. He explained that at this point he couldn't move or change the lots. He pointed out that even though the staff recommended denial, he suspects that they understand the other side of the story.

Ralph Webb asked if the houses would all be built by this contractor.

Daniel Teder replied that although David Kovich is a developer and a builder, this particular lot has been sold to a builder who has sought a building permit and dug the basement.

Ralph Webb asked what guarantee was there that the new house would be aesthetically pleasing and fit in.

Daniel Teder stated that there are restrictions on that area that the houses be a minimum of 1800 square feet with side-loaded garages.

Ralph Webb asked why a smaller house could not be built on that lot.

Daniel Teder stated that they cannot build anything less than 1800 square feet.

David Kovich informed the Board that there is a building committee that has to approve plans for all new houses.

Daniel Teder explained that there is an architectural committee that reviews each lot's building plans against the covenants and restrictions of the subdivision.

Steve Clevenger asked if the extra 20 feet of right-of-way was requested by INDOT.

Sallie Fahey replied that she thought it was part of the entrance design for the main entrance.

David Kovich stated that he spoke to INDOT and they said that those requirements were imposed by the County, not them.

Sallie Fahey stated that the other possibility was that at the time there were 2 entrances planned and they were too close together, so they decided to make it all one layer right-of-way.

Daniel Teder stated that he thought that was the most logical answer.

Steve Clevenger stated that he was concerned with the size of lot 85. He said that he understood that there was no way of dividing it into separate requests tonight, but wondered if there was some way to shrink it.

Daniel Teder reiterated that it was his idea to submit the request in this format. He said that he did not know what the minimum relief would be because of the unusual shape of the lot.

Steve Clevenger stated that he would feel more comfortable if they were two separate requests.

Jean Hall asked if the foundation had already been dug for lot 55.

Daniel Teder stated that the hole has been dug but no concrete has been poured.

Sallie Fahey explained that if the variance were approved then they would proceed with the final plat, which would be recorded with the approved setback. Once the plat is recorded the building permit is issued.

Daniel Teder stressed that 3 years have been put into this project and although it is not perfect, it is not self-imposed. He agreed that there is more flexibility in the other option, but that would mean more time, money and effort. He pointed out that there was not any one left in the audience and there were no objections.

Ralph Webb stated that to separate the request would not result in a more architecturally sound or aesthetically pleasing arrangement of homes and to lump them together does.

Daniel Teder stated that the only reason for submitting it in this was to save money, not to try to get away with something. He said that he appreciated leniency in this matter.

Jay Seeger said that he wanted it to be clear that the Board does not vote on aesthetics.

Jean Hall stated that he would like to move forward with this rather than drag it out. He mentioned that there was no additional evidence of harm or hardship in that area. He said that he did not think they needed to be separated, only to come back to this point again.

Gary Schroeder agreed. He said that he would like to get lot #55 resolved tonight.

The Board voted by ballot 4 to grant –0 to deny thus granting BZA-1645—KOMARK BUSINESS COMPANY.

Jean Hall stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

IV. ADMINISTRATIVE MATTERS

V. ADJOURNMENT

Ralph Webb moved to adjourn the meeting. Gary Schroeder seconded and the motion carried by voice vote.

The meeting adjourned at 9:05 P.M.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. D'Andrea", written in a cursive style.

Michelle D'Andrea
Recording Secretary

Reviewed by,

A handwritten signature in black ink, appearing to read "Sallie Dell Fahey", written in a cursive style.

Sallie Dell Fahey
Assistant Director